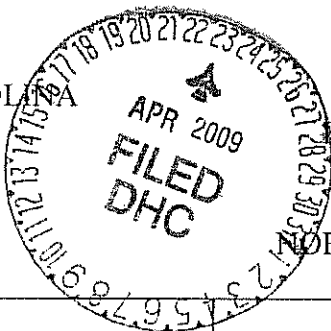


STATE OF NORTH CAROLINA

WAKE COUNTY



BEFORE THE
DISCIPLINARY HEARING
COMMISSION
OF THE
NORTH CAROLINA STATE BAR
09 DHC 9

THE NORTH CAROLINA STATE BAR,

Plaintiff

v.

ELIZABETH J. WOLFENDEN, Attorney,

Defendant

COMPLAINT

Plaintiff, complaining of Defendant, alleges and says:

1. Plaintiff, the North Carolina State Bar ("State Bar"), is a body duly organized under the laws of North Carolina and is the proper party to bring this proceeding under the authority granted it in Chapter 84 of the North Carolina General Statutes, and the Rules and Regulations of the North Carolina State Bar (Chapter 1 of Title 27 of the North Carolina Administrative Code).

2. Defendant, Elizabeth J. Wolfenden ("Wolfenden" or "Defendant"), was admitted to the North Carolina State Bar in 2000, and is, and was at all times referred to herein, an attorney at law licensed to practice in North Carolina, subject to the laws of the State of North Carolina, the Rules and Regulations of the North Carolina State Bar and the Revised Rules of Professional Conduct.

Upon information and belief:

3. During the relevant periods referred to herein, Wolfenden was engaged in the practice of law in the State of North Carolina and maintained a law office in Chapel Hill, Orange County, North Carolina.

FIRST CLAIM FOR RELIEF

4. In 2005, Wolfenden began representing Kathryn Klein ("Klein") in a domestic case in Orange County.

5. In exchange for Wolfenden's legal services, Klein executed a promissory note in the amount of \$50,000.00, which was secured by a deed of trust on property jointly owned by Klein and her ex-husband, William Klein.

6. Prior to executing the deed of trust, Klein did not give informed consent, in a writing signed by Klein, to the essential terms of the transaction by which Wolfenden would acquire a security interest in Klein's property and to Wolfenden's role in that transaction.

7. Prior to accepting the deed of trust from Klein, Wolfenden did not advise Klein in writing of the desirability of seeking, or give Klein a reasonable opportunity to seek, the advice of independent legal counsel regarding the transaction by which Wolfenden would acquire a security interest in Klein's property.

8. In or about July 2007, the substitute trustee on the deed of trust from Klein to Wolfenden sent Klein a "Notice of Demand" regarding payment on the note.

9. The Notice of Demand stated that if Klein did not pay Wolfenden \$50,000.00 plus all accrued interest by 20 July 2007, Wolfenden would foreclose.

10. By letter dated 16 August 2007, the attorney for the substitute trustee notified Klein that Wolfenden was moving forward on foreclosure proceedings unless full payment was immediately forthcoming.

11. On 19 September 2007, Wolfenden initiated foreclosure proceedings under the deed of trust from Klein.

12. When Wolfenden initiated foreclosure proceedings, the subject property was still part of the marital estate subject to equitable distribution by the court in the pending domestic case.

13. Wolfenden continued to represent Klein at the time she initiated foreclosure and thereafter.

THEREFORE, Plaintiff alleges that Defendant's foregoing actions constitute grounds for discipline pursuant to N.C. Gen. Stat. § 84-28(b)(2) in that Wolfenden violated the Revised Rules of Professional Conduct in effect at the time of the conduct as follows:

- (a) By obtaining a security interest in property owned by Klein without obtaining Klein's prior informed consent in a signed writing and without advising Klein of the desirability of seeking independent legal counsel, Wolfenden acquired a pecuniary interest directly adverse to a client in violation of Rule 1.8(a); and
- (b) By initiating foreclosure against property owned by Klein while continuing to represent Klein, Wolfenden engaged in a conflict of interest in violation of Rule 1.7(a)(2) and intentionally prejudiced her client during the course of the professional relationship in violation of Rule 8.4(g).

SECOND CLAIM FOR RELIEF

14. Paragraphs 1 through 13 are re-alleged and incorporated as if fully set forth herein.

15. In an 18 April 2008 letter to the Chief District Court Judge regarding his handling of *Klein v. Klein*, 05 CVD 1311, Wolfenden accused the judge of engaging in *ex parte* communications with opposing counsel.

16. Wolfenden's 18 April 2008 letter was copied to at least seven other individuals.

17. Wolfenden repeated the allegation of improper *ex parte* communications by the Chief District Court Judge in several different public formats.

18. Wolfenden had no factual basis for alleging that the Chief District Court Judge engaged in improper *ex parte* communications regarding *Klein v. Klein*.

THEREFORE, Plaintiff alleges that Defendant's foregoing actions constitute grounds for discipline pursuant to N.C. Gen. Stat. § 84-28(b)(2) in that Wolfenden violated the Revised Rules of Professional Conduct in effect at the time of the conduct as follows: By accusing the Chief District Court Judge of *ex parte* communications without a factual basis for making the accusation, Wolfenden made a statement concerning the qualifications or integrity of a judge which she knew was false or with reckless disregard as to its truth or falsity in violation of Rule 8.2(a) and engaged in conduct involving deceit or misrepresentation in violation of Rule 8.4(c).

THIRD CLAIM FOR RELIEF

19. Paragraphs 1 through 18 are re-alleged and incorporated as if fully set forth herein.

20. At the 7 April 2008 Orange County District Court calendar call, Wolfenden stated that the Administrative Office of the Courts ("AOC") Director had expressed an opinion that the case of *Klein v. Klein* should be heard within the month and should be presided over by a visiting judge.

21. The AOC Director had expressed no such opinion concerning when the *Klein* case should be heard or who should preside over the hearing.

22. Wolfenden also stated that the AOC Director had faxed a letter to Wolfenden and opposing counsel regarding the *Klein* case.

23. The AOC Director had not written a letter to Wolfenden and/or opposing counsel regarding the case.

24. At the time Wolfenden made these statements about the AOC Director, she knew the statements were false.

25. The following day, Wolfenden wrote opposing counsel an email in which she threatened to make a "second complaint" to the AOC and its Director, and stated that the AOC Director "assumed this matter would be taken care of yesterday."

26. The AOC Director had not expressed any opinion on when scheduling of the Klein case should be "taken care of."

27. At the time Wolfenden wrote the email containing the statement about the AOC Director's expectations regarding the Klein case, she knew the statement was false.

THEREFORE, Plaintiff alleges that Defendant's foregoing actions constitute grounds for discipline pursuant to N.C. Gen. Stat. § 84-28(b)(2) in that Wolfenden violated the Revised Rules of Professional Conduct in effect at the time of the conduct as follows: By making false statements concerning the Administrative Office of the Courts and its Director to the Court and to opposing counsel, Wolfenden engaged in conduct involving deceit and misrepresentation in violation of Rule 8.4(c), knowingly made false statements of material fact to a third person in violation of Rule 4.1, and knowingly made a false statement of material fact to the tribunal in violation of Rule 3.3(a).

FOURTH CLAIM FOR RELIEF

28. Paragraphs 1 through 27 are re-alleged and incorporated as if fully set forth herein.

29. In April 2006, Joanna Crews Edwards ("Crews") hired Wolfenden to represent her in a domestic case.

30. Crews sought to maintain possession of the marital residence in the equitable distribution action.

31. In exchange for Wolfenden's legal services, Crews executed a promissory note in the amount of \$20,000.00, which was secured by a deed of trust on Crews' marital residence.

32. Prior to executing the deed of trust, Crews did not give informed consent, in a writing signed by Crews, to the essential terms of the transaction by which Wolfenden would acquire a security interest in Crews' marital residence and to Wolfenden's role in that transaction.

33. Prior to accepting the deed of trust from Crews, Wolfenden did not advise Crews in writing of the desirability of seeking, or give Crews a reasonable opportunity to seek, the advice of independent legal counsel regarding the transaction by which Wolfenden would acquire a security interest in Crews' marital residence.

34. Based on her communication with Wolfenden about the transaction whereby Wolfenden acquired a security interest in Crews' marital residence, it was Crews' understanding that the cost of Wolfenden's services would not exceed \$20,000.00, and that the majority of Wolfenden's legal fees would be paid out of assets awarded to Crews in the equitable distribution action.

35. In the four months after Crews hired Wolfenden, Crews did not receive a statement of account or invoice from Wolfenden.

36. Wolfenden did not notify Crews when her legal fees exceeded \$20,000.00.

37. In August 2006, Wolfenden informed Crews that her legal fees exceeded \$24,000.00, and if she wanted Wolfenden to represent her any further, Crews would have to pay an "additional retainer" of \$2,000.00.

38. Crews was unable to pay the additional retainer, and Wolfenden withdrew from the representation on 11 September 2006.

39. After Wolfenden withdrew from the representation, she sent Crews an invoice indicating that Crews owed her a total of \$29,126.86.

40. The invoice included charges of \$525.00 in legal fees for Wolfenden's appearance at the hearing at which Wolfenden obtained leave of the court to withdraw as counsel for Crews.

41. Appearing before the court and obtaining permission to withdraw as counsel of record for Crews was Wolfenden's professional duty, not a legal service for Crews' benefit.

THEREFORE, Plaintiff alleges that Defendant's foregoing actions constitute grounds for discipline pursuant to N.C. Gen. Stat. § 84-28(b)(2) in that Wolfenden violated the Revised Rules of Professional Conduct in effect at the time of the conduct as follows:

- (a) By obtaining a security interest in property owned by Crews without obtaining Crews' prior informed consent in a signed writing and without advising Crews of the desirability of seeking independent legal counsel, Wolfenden acquired a pecuniary interest directly adverse to a client in violation of Rule 1.8(a);
- (b) By not adequately explaining that her legal fees would exceed the amount secured by the promissory note, and by failing to notify Crews when the cost of the representation exceeded the secured amount, Wolfenden failed to explain a matter to the extent reasonably necessary to permit her client to make informed decisions regarding the representation in violation of Rule 1.4(b) and failed to communicate to her client the basis or rate of the fee in violation of Rule 1.5(b); and

- (c) By charging Crews legal fees for performing the professional duty of withdrawing as counsel, Wolfenden charged a clearly excessive fee in violation of Rule 1.5(a).

FIFTH CLAIM FOR RELIEF

42. Paragraphs 1 through 41 are re-alleged and incorporated as if fully set forth herein.

43. In 2008, Wolfenden sought election to the District Court bench in Judicial District 15-B.

44. On 13 May 2008, Wolfenden sent an email to numerous persons soliciting support for her judicial campaign. The email was addressed to “Friends, Colleagues, and Voters,” and asked the recipients to “forward this email to your friends and colleagues.”

45. In the email, Wolfenden referred to a grievance recently filed against her with the State Bar.

46. Wolfenden attached to the email several PDF documents concerning the grievance, including a letter from the State Bar to Wolfenden and Wolfenden’s responsive communication to the State Bar, both of which referred to two of Wolfenden’s clients (Klein and Crews) by name.

47. Wolfenden’s written response to the State Bar contained disparaging statements about one client’s financial situation and emotional health.

48. The documents attached to Wolfenden’s 13 May 2008 email contained information about Klein and Crews acquired by Wolfenden during her professional relationship with those clients.

49. Klein had not given informed consent for Wolfenden to disclose confidential client information in the 13 May 2008 email.

50. Crews had not given informed consent for Wolfenden to disclose confidential client information in the 13 May 2008 email.

THEREFORE, Plaintiff alleges that Defendant’s foregoing actions constitute grounds for discipline pursuant to N.C. Gen. Stat. § 84-28(b)(2) in that Wolfenden violated the Revised Rules of Professional Conduct in effect at the time of the conduct as follows: By publically disseminating documents which contained information acquired during her professional relationship with Klein and Crews, Wolfenden disclosed confidential client information without her clients’ consent in violation of Rule 1.6(a).

SIXTH CLAIM FOR RELIEF

51. Paragraphs 1 through 50 are re-alleged and incorporated as if fully set forth herein.

52. N.C. General Statutes § 48-10-102 provides that, except for certain actual expenses, “a person or entity may not pay or give, offer to pay or give, or request, receive or accept any money or anything of value, directly or indirectly, for: (1) the placement of a minor for adoption; [or] (2) The consent of a parent...to the adoption of a minor.”

53. Violation of § 48-10-102 is a Class 1 misdemeanor.

54. Wolfenden represented Emily McManaway (“McManaway”) in legal proceedings related to McManaway’s son.

55. In an 8 October 2008 letter to opposing counsel, Wolfenden proposed two options for settlement of claims concerning McManaway’s son.

56. The first settlement option proposed that McManaway would consent to the opposing parties having permanent sole legal custody and primary physical custody of her son, in exchange for a \$55,000.00 payment.

57. The second settlement option proposed that McManaway would consent to the opposing parties’ adoption of her son, in exchange for a \$75,000.00 payment.

58. The only substantive difference between the two settlement options proposed by Wolfenden was that one provided for legal and physical custody, while the other provided for adoption.

59. On behalf of McManaway, Wolfenden requested an additional \$20,000.00 in exchange for McManaway’s consent to adoption.

60. At the time Wolfenden made this request on behalf of McManaway, Wolfenden knew that requesting payment for a parent’s consent to adoption of a minor was prohibited by law.

THEREFORE, Plaintiff alleges that Defendant’s foregoing actions constitute grounds for discipline pursuant to N.C. Gen. Stat. § 84-28(b)(2) in that Wolfenden violated the Revised Rules of Professional Conduct in effect at the time of the conduct as follows: By requesting additional monetary payment in exchange for McManaway’s consent to the adoption of her son, Wolfenden counseled a client to engage in or assisted a client in conduct Wolfenden knew was criminal or fraudulent in violation of Rule 1.2(d).

SEVENTH CLAIM FOR RELIEF

61. Paragraphs 1 through 60 are re-alleged and incorporated as if fully set forth herein.

62. At an 11 March 2009 hearing in *Bohannon v. McManaway*, 06 CVD 1810, Wolfenden stated in open court that the presiding judge was “not fit to be on the bench.”

63. Wolfenden also suggested that the presiding judge used illicit drugs and engaged in an adulterous relationship.

64. Wolfenden had no factual basis for making these allegations about the presiding judge.

65. Wolfenden’s allegations against the presiding judge were not relevant to the matter before the court.

66. Wolfenden’s allegations against the presiding judge had no substantial purpose other than to embarrass or burden the judge.

THEREFORE, Plaintiff alleges that Wolfenden’s foregoing actions constitute grounds for discipline pursuant to N.C. Gen. Stat. § 84-28(b)(2) in that Wolfenden violated the Revised Rules of Professional Conduct in effect at the time of the conduct as follows: By accusing the presiding judge of misconduct and unfitness without a factual basis for making the accusations, Wolfenden made statements concerning the qualifications or integrity of a judge which she knew were false or with reckless disregard as to their truth or falsity in violation of Rule 8.2(a), engaged in undignified or discourteous conduct that was degrading to the tribunal in violation of Rule 3.5(a)(4), and used means that had no substantial purpose other than to embarrass or burden a third person in violation of Rule 4.4(a).

EIGHTH CLAIM FOR RELIEF

67. Paragraphs 1 through 66 are re-alleged and incorporated as if fully set forth herein.

68. On 3 December 2008, Wolfenden filed an Amended Complaint in *McManaway v. LDS Family Services, Inc. et al*, which involved many of the same issues and parties as *Bohannon v. McManaway*.

69. The Amended Complaint filed by Wolfenden in *McManaway v. LDS Family Services, Inc. et al* contained allegations of professional misconduct by opposing counsel in *Bohannon v. McManaway* which had been previously reviewed and found to be without merit.

70. Wolfenden’s Amended Complaint asked the court to discipline opposing counsel in *Bohannon v. McManaway* for “numerous ethics violations as well as report [her] conduct to the North Carolina State Bar.”

71. Wolfenden knew at the time she filed the Amended Complaint that the allegations of misconduct were without merit.

THEREFORE, Plaintiff alleges that Wolfenden's foregoing actions constitute grounds for discipline pursuant to N.C. Gen. Stat. § 84-28(b)(2) in that Wolfenden violated the Revised Rules of Professional Conduct in effect at the time of the conduct as follows: By filing the Amended Complaint containing allegations of misconduct which had previously been found to be without merit, Wolfenden asserted an issue for which there was no basis in law or in fact in violation of Rule 3.1 and used means that had no substantial purpose other than to embarrass, delay, or burden a third person in violation of Rule 4.4(a).

NINTH CLAIM FOR RELIEF

72. Paragraphs 1 through 71 are re-alleged and incorporated as if fully set forth herein.

73. Wolfenden served as counsel for the defendant in *Lyons v. Lyons*, 07 CVD 1260.

74. At a 12 February 2009 hearing in *Lyons*, Wolfenden requested a continuance, seeking to have at least one matter heard at a later date.

75. *Lyons* was then scheduled for district court calendar call on 2 March 2009, but due to inclement weather, calendar call was rescheduled for 4 March 2009.

76. Wolfenden did not appear at the 4 March 2009 calendar call, at which the *Lyons* case was scheduled for hearing on 23 March 2009.

77. At the 23 March 2009 hearing in *Lyons*, Wolfenden was present but asked the court to continue the hearing, claiming that she had not received proper notice.

78. At the 23 March 2009 hearing, Wolfenden stated that the Chief District Court Judge had contacted opposing counsel directly to inform opposing counsel of the rescheduled date of the March calendar call, but had not informed Wolfenden of the same.

79. Wolfenden's statement that the Chief District Court Judge had directly informed opposing counsel of the rescheduled date of calendar call was false.

80. Also at the 23 March 2009 hearing, Wolfenden represented to the court that she had not requested a continuance at the 12 February 2009 hearing in *Lyons*.

81. This representation was false, as Wolfenden had requested a continuance of the February 2009 *Lyons* hearing.

82. During the course of the 23 March 2009 hearing, Wolfenden made the following statements about opposing counsel in open court:

- a. “[Y]ou have lost your moral compass, and you have stopped following the law, and that’s becoming a huge problem.”
- b. Wolfenden stated that opposing counsel’s “silence” in response to Wolfenden’s arguments regarding notice of the hearing was “unethical.”
- c. “[O]pposing counsel is engaging in legal games.”

83. In response to the statement set forth in paragraph 82(a) above, the Court admonished Wolfenden as follows: “[A]s lawyers we are supposed to be the professionals, and as lawyers the last thing we should be doing is having conversations of this sort with clients, members of the general public here. . . . We should not be in here disparaging anyone for any purpose. Anything personal needs to be said behind closed doors.”

84. Wolfenden’s statements set forth in paragraph 82 above had no substantial purpose other than to embarrass or burden opposing counsel.

85. When Wolfenden later learned that the presiding judge had requested a transcript of the 23 March 2009 *Lyons* hearing, Wolfenden wrote a letter to the judge.

86. Wolfenden’s letter to the judge stated that Wolfenden’s clients could not “receive fair hearings before an impartial judge” unless the judge recused herself from all of Wolfenden’s cases.

87. Wolfenden’s letter to the judge was not a motion, pleading, or any other type of legal document filed on behalf of Wolfenden’s client.

88. Wolfenden filed her letter to the judge in the public record.

89. Wolfenden’s publication of her opinion about the presiding judge’s lack of fairness and impartiality had no substantial purpose other than to embarrass or burden the judge.

THEREFORE, Plaintiff alleges that Wolfenden’s foregoing actions constitute grounds for discipline pursuant to N.C. Gen. Stat. § 84-28(b)(2) in that Wolfenden violated the Revised Rules of Professional Conduct in effect at the time of the conduct as follows:

- (a) By falsely stating to the court that the Chief District Court Judge had directly contacted opposing counsel regarding the rescheduled calendar call, Wolfenden engaged in conduct involving deceit and misrepresentation in violation of Rule 8.4(c) and knowingly made a false statement of material fact to the tribunal in violation of Rule 3.3(a);

- (b) By falsely stating to the court that she had not requested a continuance at the February hearing in *Lyons*, Wolfenden engaged in conduct involving deceit and misrepresentation in violation of Rule 8.4(c) and knowingly made a false statement of material fact to the tribunal in violation of Rule 3.3(a);
- (c) By engaging in personal attacks on opposing counsel in open court, Wolfenden engaged in undignified or discourteous conduct that was degrading to the tribunal in violation of Rule 3.5(a)(4) and made statements that had no substantial purpose other than to embarrass or burden a third person in violation of Rule 4.4(a); and
- (d) By filing in the public record a letter stating the presiding judge could not be fair and impartial to Wolfenden's clients, Wolfenden engaged in undignified or discourteous conduct that was degrading to the tribunal in violation of Rule 3.5(a)(4) and made statements that had no substantial purpose other than to embarrass or burden a third person in violation of Rule 4.4(a).

TENTH CLAIM FOR RELIEF

90. Paragraphs 1 through 89 are re-alleged and incorporated as if fully set forth herein.

91. Wolfenden's law practice primarily involves representing clients in domestic cases in district court in Judicial District 15B.

92. Throughout 2008 and 2009, Wolfenden's conduct in district court has become increasingly erratic and disruptive.

93. Wolfenden's interaction with the court and opposing counsel is combative and characterized by paranoia and frivolous allegations of misconduct.

94. Wolfenden's erratic, disruptive, combative, and paranoid behavior includes, but is not limited to:

- a. Engaging in personal attacks on opposing counsel in open court, examples of which are set forth in paragraph 82 above;
- b. Filing a frivolous claim against opposing counsel, as set forth in paragraphs 68 through 71 above;
- c. Making unfounded accusations of misconduct by presiding judges, in open court and/or on the public record, examples of which are set forth in paragraphs 15 through 18, 63 through 66, and 85 through 89 above;

- d. Stating to the presiding judge, in open court, that he was “not fit to be on the bench,” as described in paragraph 62, above; and
- e. Threatening to sue other lawyers in her district when there is no basis in law or fact for such litigation.

95. Wolfenden’s erratic, disruptive, combative, and paranoid behavior suggests that her professional judgment, performance, or competence is significantly impaired.

THEREFORE, the State Bar alleges that Wolfenden suffers from a physical and/or mental condition that significantly impairs her professional judgment, performance, or competency to act as an attorney, that Wolfenden is disabled within the meaning of 27 N.C.A.C. 1B § .0103(19), and that Wolfenden should be transferred to disability inactive status pursuant to 27 N.C.A.C. 1B § .0118.

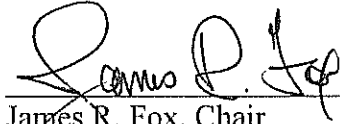
WHEREFORE, Plaintiff prays for an order:

- (1) Requiring Defendant to submit to an examination and evaluation by medical personnel designated by the Hearing Committee pursuant to 27 N.C.A.C. 1B § .0118(b)(3) and North Carolina Rules of Civil Procedure 35(a); and/or
- (2) Transferring Defendant to disability inactive status in accordance with N.C.G.S. § 84-28(g) and 27 N.C.A.C. 1B § .0118(b)(6).

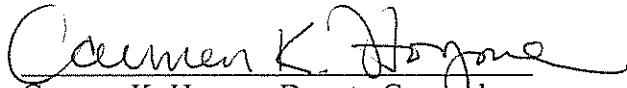
In the alternative, if the Hearing Committee does not find that Defendant is disabled within the meaning of 27 N.C.A.C. 1B § .0103(19) and does not transfer her to disability inactive status pursuant to 27 N.C.A.C. 1B § .0118 as set forth in the Tenth Claim for Relief, or in the event Defendant is transferred to disability inactive status and subsequently returns to active status, Plaintiff prays that:

- (1) Disciplinary action be taken against Defendant in accordance with N.C. Gen. Stat. § 84-28(a) and 27 N.C.A.C. 1B § .0114, as the evidence on hearing may warrant;
- (2) Defendant be taxed with the costs permitted by law in connection with this proceeding; and
- (3) For such other and further relief as is appropriate.

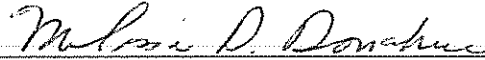
The 23 day of April, 2009.



James R. Fox, Chair
Grievance Committee



Carmen K. Hoyme, Deputy Counsel
State Bar No. 33998



Melissa D. Donahue, Deputy Counsel
State Bar No. 27792

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